

102ND GENERAL ASSEMBLY**State of Illinois****2021 and 2022****SB0109**

Introduced 2/3/2021, by Sen. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

755 ILCS 40/10
755 ILCS 40/20
755 ILCS 40/65

from Ch. 110 1/2, par. 851-10
from Ch. 110 1/2, par. 851-20

Amends the Health Care Surrogate Act. Changes certain uses of the term "qualified physician" to "qualified health care practitioner". Provides that execution of a POLST form shall not be a requirement for admission to any facility or a precondition to the provision of services by any provider of health care services. Provides that an individual may revoke a document directing that resuscitating efforts shall not be implemented. In a Section regarding Department of Public Health Uniform POLST forms, changes the definition of "attending health care practitioner". Provides that a health care provider facility shall comply with a POLST form, National POLST form, another state's POLST Paradigm portable medical orders form, or an out-of-hospital Do Not Resuscitate (DNR) order sanctioned by a State in the United States that: has been executed by an adult; and is apparent and immediately available. Provides that before voiding or revoking a uniform practitioner orders for life-sustaining treatment (POLST) form, National POLST form, or another state's POLST Paradigm portable medical orders form consented to by the individual, that individual's legally authorized surrogate decision maker shall first: engage in consultation with the attending health care practitioner; consult the patient's advance directive, if available; and make a good faith effort to act consistently, at all times, with the patient's known wishes, or, if the patient's wishes are not known, using substituted judgment as the standard. Provides that when an individual's legally authorized surrogate is making a good faith effort to act consistently with the patient's known wishes to void or revoke a POLST form, if the patient's wishes are unknown and remain unknown after reasonable efforts to discern them, the decision shall be made on the basis of the patient's best interests as determined by the surrogate decision maker.

LRB102 10223 LNS 15547 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Health Care Surrogate Act is amended by
5 changing Sections 10, 20, and 65 as follows:

6 (755 ILCS 40/10) (from Ch. 110 1/2, par. 851-10)

7 Sec. 10. Definitions.

8 "Adult" means a person who is (i) 18 years of age or older
9 or (ii) an emancipated minor under the Emancipation of Minors
10 Act.

11 "Artificial nutrition and hydration" means supplying food
12 and water through a conduit, such as a tube or intravenous
13 line, where the recipient is not required to chew or swallow
14 voluntarily, including, but not limited to, nasogastric tubes,
15 gastrostomies, jejunostomies, and intravenous infusions.
16 Artificial nutrition and hydration does not include assisted
17 feeding, such as spoon or bottle feeding.

18 "Available" means that a person is not "unavailable". A
19 person is unavailable if (i) the person's existence is not
20 known, (ii) the person has not been able to be contacted by
21 telephone or mail, or (iii) the person lacks decisional
22 capacity, refuses to accept the office of surrogate, or is
23 unwilling to respond in a manner that indicates a choice among

1 the treatment matters at issue.

2 "Attending physician" means the physician selected by or
3 assigned to the patient who has primary responsibility for
4 treatment and care of the patient and who is a licensed
5 physician in Illinois. If more than one physician shares that
6 responsibility, any of those physicians may act as the
7 attending physician under this Act.

8 "Close friend" means any person 18 years of age or older
9 who has exhibited special care and concern for the patient and
10 who presents an affidavit to the attending physician stating
11 that he or she (i) is a close friend of the patient, (ii) is
12 willing and able to become involved in the patient's health
13 care, and (iii) has maintained such regular contact with the
14 patient as to be familiar with the patient's activities,
15 health, and religious and moral beliefs. The affidavit must
16 also state facts and circumstances that demonstrate that
17 familiarity.

18 "Death" means when, according to accepted medical
19 standards, there is (i) an irreversible cessation of
20 circulatory and respiratory functions or (ii) an irreversible
21 cessation of all functions of the entire brain, including the
22 brain stem.

23 "Decisional capacity" means the ability to understand and
24 appreciate the nature and consequences of a decision regarding
25 medical treatment or forgoing life-sustaining treatment and
26 the ability to reach and communicate an informed decision in

1 the matter as determined by the attending physician.

2 "Forgo life-sustaining treatment" means to withhold,
3 withdraw, or terminate all or any portion of life-sustaining
4 treatment with knowledge that the patient's death is likely to
5 result.

6 "Guardian" means a court appointed guardian of the person
7 who serves as a representative of a minor or as a
8 representative of a person under legal disability.

9 "Health care facility" means a type of health care
10 provider commonly known by a wide variety of titles, including
11 but not limited to, hospitals, medical centers, nursing homes,
12 rehabilitation centers, long term or tertiary care facilities,
13 and other facilities established to administer health care and
14 provide overnight stays in their ordinary course of business
15 or practice.

16 "Health care provider" means a person that is licensed,
17 certified, or otherwise authorized or permitted by the law of
18 this State to administer health care in the ordinary course of
19 business or practice of a profession, including, but not
20 limited to, physicians, nurses, health care facilities, and
21 any employee, officer, director, agent, or person under
22 contract with such a person.

23 "Imminent" (as in "death is imminent") means a
24 determination made by the attending physician according to
25 accepted medical standards that death will occur in a
26 relatively short period of time, even if life-sustaining

1 treatment is initiated or continued.

2 "Life-sustaining treatment" means any medical treatment,
3 procedure, or intervention that, in the judgment of the
4 attending physician, when applied to a patient with a
5 qualifying condition, would not be effective to remove the
6 qualifying condition or would serve only to prolong the dying
7 process. Those procedures can include, but are not limited to,
8 assisted ventilation, renal dialysis, surgical procedures,
9 blood transfusions, and the administration of drugs,
10 antibiotics, and artificial nutrition and hydration.

11 "Minor" means an individual who is not an adult as defined
12 in this Act.

13 "Parent" means a person who is the natural or adoptive
14 mother or father of the child and whose parental rights have
15 not been terminated by a court of law.

16 "Patient" means an adult or minor individual, unless
17 otherwise specified, under the care or treatment of a licensed
18 physician or other health care provider.

19 "Person" means an individual, a corporation, a business
20 trust, a trust, a partnership, an association, a government, a
21 governmental subdivision or agency, or any other legal entity.

22 "Qualifying condition" means the existence of one or more
23 of the following conditions in a patient certified in writing
24 in the patient's medical record by the attending physician and
25 by at least one other qualified health care practitioner
26 ~~physician~~:

1 (1) "Terminal condition" means an illness or injury
2 for which there is no reasonable prospect of cure or
3 recovery, death is imminent, and the application of
4 life-sustaining treatment would only prolong the dying
5 process.

6 (2) "Permanent unconsciousness" means a condition
7 that, to a high degree of medical certainty, (i) will last
8 permanently, without improvement, (ii) in which thought,
9 sensation, purposeful action, social interaction, and
10 awareness of self and environment are absent, and (iii)
11 for which initiating or continuing life-sustaining
12 treatment, in light of the patient's medical condition,
13 provides only minimal medical benefit.

14 (3) "Incurable or irreversible condition" means an
15 illness or injury (i) for which there is no reasonable
16 prospect of cure or recovery, (ii) that ultimately will
17 cause the patient's death even if life-sustaining
18 treatment is initiated or continued, (iii) that imposes
19 severe pain or otherwise imposes an inhumane burden on the
20 patient, and (iv) for which initiating or continuing
21 life-sustaining treatment, in light of the patient's
22 medical condition, provides only minimal medical benefit.

23 The determination that a patient has a qualifying
24 condition creates no presumption regarding the application or
25 non-application of life-sustaining treatment. It is only after
26 a determination by the attending physician that the patient

1 has a qualifying condition that the surrogate decision maker
2 may consider whether or not to forgo life-sustaining
3 treatment. In making this decision, the surrogate shall weigh
4 the burdens on the patient of initiating or continuing
5 life-sustaining treatment against the benefits of that
6 treatment.

7 "Qualified health care practitioner" means an individual
8 who has personally examined the patient and who is an Illinois
9 licensed physician, advanced practice registered nurse,
10 physician assistant, or resident with at least one year of
11 graduate or specialty training in this State who holds an
12 Illinois temporary license to practice medicine and is
13 enrolled in a residency program accredited by the Liaison
14 Committee on Graduate Medical Education or the Bureau of
15 Professional Education of the American Osteopathic
16 Association.

17 "Qualified physician" means a physician licensed to
18 practice medicine in all of its branches in Illinois who has
19 personally examined the patient.

20 "Surrogate decision maker" means an adult individual or
21 individuals who (i) have decisional capacity, (ii) are
22 available upon reasonable inquiry, (iii) are willing to make
23 medical treatment decisions on behalf of a patient who lacks
24 decisional capacity, and (iv) are identified by the attending
25 physician in accordance with the provisions of this Act as the
26 person or persons who are to make those decisions in

1 accordance with the provisions of this Act.

2 (Source: P.A. 95-331, eff. 8-21-07.)

3 (755 ILCS 40/20) (from Ch. 110 1/2, par. 851-20)

4 Sec. 20. Private decision making process.

5 (a) Decisions whether to forgo life-sustaining or any
6 other form of medical treatment involving an adult patient
7 with decisional capacity may be made by that adult patient.

8 (b) Decisions whether to forgo life-sustaining treatment
9 on behalf of a patient without decisional capacity are lawful,
10 without resort to the courts or legal process, if the patient
11 has a qualifying condition and if the decisions are made in
12 accordance with one of the following paragraphs in this
13 subsection and otherwise meet the requirements of this Act:

14 (1) Decisions whether to forgo life-sustaining
15 treatment on behalf of a minor or an adult patient who
16 lacks decisional capacity may be made by a surrogate
17 decision maker or makers in consultation with the
18 attending physician, in the order or priority provided in
19 Section 25. A surrogate decision maker shall make
20 decisions for the adult patient conforming as closely as
21 possible to what the patient would have done or intended
22 under the circumstances, taking into account evidence that
23 includes, but is not limited to, the patient's personal,
24 philosophical, religious and moral beliefs and ethical
25 values relative to the purpose of life, sickness, medical

1 procedures, suffering, and death. Where possible, the
2 surrogate shall determine how the patient would have
3 weighed the burdens and benefits of initiating or
4 continuing life-sustaining treatment against the burdens
5 and benefits of that treatment. In the event an unrevoked
6 advance directive, such as a living will, a declaration
7 for mental health treatment, or a power of attorney for
8 health care, is no longer valid due to a technical
9 deficiency or is not applicable to the patient's
10 condition, that document may be used as evidence of a
11 patient's wishes. The absence of a living will,
12 declaration for mental health treatment, or power of
13 attorney for health care shall not give rise to any
14 presumption as to the patient's preferences regarding the
15 initiation or continuation of life-sustaining procedures.
16 If the adult patient's wishes are unknown and remain
17 unknown after reasonable efforts to discern them or if the
18 patient is a minor, the decision shall be made on the basis
19 of the patient's best interests as determined by the
20 surrogate decision maker. In determining the patient's
21 best interests, the surrogate shall weigh the burdens on
22 and benefits to the patient of initiating or continuing
23 life-sustaining treatment against the burdens and benefits
24 of that treatment and shall take into account any other
25 information, including the views of family and friends,
26 that the surrogate decision maker believes the patient

1 would have considered if able to act for herself or
2 himself.

3 (2) Decisions whether to forgo life-sustaining
4 treatment on behalf of a minor or an adult patient who
5 lacks decisional capacity, but without any surrogate
6 decision maker or guardian being available determined
7 after reasonable inquiry by the health care provider, may
8 be made by a court appointed guardian. A court appointed
9 guardian shall be treated as a surrogate for the purposes
10 of this Act.

11 (b-5) Decisions concerning medical treatment on behalf of
12 a patient without decisional capacity are lawful, without
13 resort to the courts or legal process, if the patient does not
14 have a qualifying condition and if decisions are made in
15 accordance with one of the following paragraphs in this
16 subsection and otherwise meet the requirements of this Act:

17 (1) Decisions concerning medical treatment on behalf
18 of a minor or adult patient who lacks decisional capacity
19 may be made by a surrogate decision maker or makers in
20 consultation with the attending physician, in the order of
21 priority provided in Section 25 with the exception that
22 decisions to forgo life-sustaining treatment may be made
23 only when a patient has a qualifying condition. A
24 surrogate decision maker shall make decisions for the
25 patient conforming as closely as possible to what the
26 patient would have done or intended under the

1 circumstances, taking into account evidence that includes,
2 but is not limited to, the patient's personal,
3 philosophical, religious, and moral beliefs and ethical
4 values relative to the purpose of life, sickness, medical
5 procedures, suffering, and death. In the event an
6 unrevoked advance directive, such as a living will, a
7 declaration for mental health treatment, or a power of
8 attorney for health care, is no longer valid due to a
9 technical deficiency or is not applicable to the patient's
10 condition, that document may be used as evidence of a
11 patient's wishes. The absence of a living will,
12 declaration for mental health treatment, or power of
13 attorney for health care shall not give rise to any
14 presumption as to the patient's preferences regarding any
15 process. If the adult patient's wishes are unknown and
16 remain unknown after reasonable efforts to discern them or
17 if the patient is a minor, the decision shall be made on
18 the basis of the patient's best interests as determined by
19 the surrogate decision maker. In determining the patient's
20 best interests, the surrogate shall weigh the burdens on
21 and benefits to the patient of the treatment against the
22 burdens and benefits of that treatment and shall take into
23 account any other information, including the views of
24 family and friends, that the surrogate decision maker
25 believes the patient would have considered if able to act
26 for herself or himself.

1 (2) Decisions concerning medical treatment on behalf
2 of a minor or adult patient who lacks decisional capacity,
3 but without any surrogate decision maker or guardian being
4 available as determined after reasonable inquiry by the
5 health care provider, may be made by a court appointed
6 guardian. A court appointed guardian shall be treated as a
7 surrogate for the purposes of this Act.

8 (c) For the purposes of this Act, a patient or surrogate
9 decision maker is presumed to have decisional capacity in the
10 absence of actual notice to the contrary without regard to
11 advanced age. With respect to a patient, a diagnosis of mental
12 illness or an intellectual disability, of itself, is not a bar
13 to a determination of decisional capacity. A determination
14 that an adult patient lacks decisional capacity shall be made
15 by the attending physician to a reasonable degree of medical
16 certainty. The determination shall be in writing in the
17 patient's medical record and shall set forth the attending
18 physician's opinion regarding the cause, nature, and duration
19 of the patient's lack of decisional capacity. Before
20 implementation of a decision by a surrogate decision maker to
21 forgo life-sustaining treatment, at least one other qualified
22 health care practitioner ~~physician~~ must concur in the
23 determination that an adult patient lacks decisional capacity.
24 The concurring determination shall be made in writing in the
25 patient's medical record after personal examination of the
26 patient. The attending physician shall inform the patient that

1 it has been determined that the patient lacks decisional
2 capacity and that a surrogate decision maker will be making
3 life-sustaining treatment decisions on behalf of the patient.
4 Moreover, the patient shall be informed of the identity of the
5 surrogate decision maker and any decisions made by that
6 surrogate. If the person identified as the surrogate decision
7 maker is not a court appointed guardian and the patient
8 objects to the statutory surrogate decision maker or any
9 decision made by that surrogate decision maker, then the
10 provisions of this Act shall not apply.

11 (d) A surrogate decision maker acting on behalf of the
12 patient shall express decisions to forgo life-sustaining
13 treatment to the attending physician and one adult witness who
14 is at least 18 years of age. This decision and the substance of
15 any known discussion before making the decision shall be
16 documented by the attending physician in the patient's medical
17 record and signed by the witness.

18 (e) The existence of a qualifying condition shall be
19 documented in writing in the patient's medical record by the
20 attending physician and shall include its cause and nature, if
21 known. The written concurrence of another qualified health
22 care practitioner ~~physician~~ is also required.

23 (f) Once the provisions of this Act are complied with, the
24 attending physician shall thereafter promptly implement the
25 decision to forgo life-sustaining treatment on behalf of the
26 patient unless he or she believes that the surrogate decision

1 maker is not acting in accordance with his or her
2 responsibilities under this Act, or is unable to do so for
3 reasons of conscience or other personal views or beliefs.

4 (g) In the event of a patient's death as determined by a
5 physician, all life-sustaining treatment and other medical
6 care is to be terminated, unless the patient is an organ donor,
7 in which case appropriate organ donation treatment may be
8 applied or continued temporarily.

9 (Source: P.A. 97-227, eff. 1-1-12.)

10 (755 ILCS 40/65)

11 Sec. 65. Department of Public Health Uniform POLST form.

12 (a) An individual of sound mind and having reached the age
13 of majority or having obtained the status of an emancipated
14 person pursuant to the Emancipation of Minors Act may execute
15 a document (consistent with the Department of Public Health
16 Uniform POLST form described in Section 2310-600 of the
17 Department of Public Health Powers and Duties Law of the Civil
18 Administrative Code of Illinois) directing that resuscitating
19 efforts shall not be implemented. This individual may also
20 revoke the document at will. Such a document may also be
21 executed by an attending health care practitioner. If more
22 than one practitioner shares that responsibility, any of the
23 attending health care practitioners may act under this
24 Section. Notwithstanding the existence of a do-not-resuscitate
25 (DNR) order or Department of Public Health Uniform POLST form,

1 appropriate organ donation treatment may be applied or
2 continued temporarily in the event of the patient's death, in
3 accordance with subsection (g) of Section 20 of this Act, if
4 the patient is an organ donor.

5 (a-5) Execution of a Department of Public Health Uniform
6 POLST form is voluntary; no person can be required to execute
7 either form. Execution of a POLST form shall not be a
8 requirement for admission to any facility or a precondition to
9 the provision of services by any provider of health care
10 services. A person who has executed a Department of Public
11 Health Uniform POLST form should review the form annually and
12 when the person's condition changes.

13 (b) Consent to a Department of Public Health Uniform POLST
14 form may be obtained from the individual, or from another
15 person at the individual's direction, or from the individual's
16 legal guardian, agent under a power of attorney for health
17 care, or surrogate decision maker, ~~and witnessed by one~~
18 ~~individual 18 years of age or older, who attests that the~~
19 ~~individual, other person, guardian, agent, or surrogate (1)~~
20 ~~has had an opportunity to read the form, and (2) has signed the~~
21 ~~form or acknowledged his or her signature or mark on the form~~
22 ~~in the witness's presence.~~

23 (b-5) As used in this Section: τ

24 "Attending" ~~"attending"~~ health care practitioner" means an
25 individual who (1) is an Illinois licensed physician, advanced
26 practice registered nurse, physician assistant, or resident

1 with at least one year of graduate or specialty training in
2 this State who holds an Illinois temporary license to practice
3 medicine and is enrolled in a residency program accredited by
4 the Liaison Committee on Graduate Medical Education or the
5 Bureau of Professional Education of the American Osteopathic
6 Association ~~licensed resident after completion of one year in~~
7 ~~a program;~~ (2) is selected by or assigned to the patient; and
8 (3) has primary responsibility for treatment and care of the
9 patient.

10 "POLST" means practitioner orders for life-sustaining
11 treatments.

12 "POLST Paradigm portable medical orders form" means a
13 medical orders form, including, but not limited to, a Medical
14 Orders for Scope of Treatment (MOST), Medical Orders for Life
15 Sustaining Treatment (MOLST), Physician Orders for Scope of
16 Treatment (POST), or Physician Orders for Life Sustaining
17 Treatment (POLST) form, that is formally authorized by a state
18 or territory within the United States.

19 (c) Nothing in this Section shall be construed to affect
20 the ability of an individual to include instructions in an
21 advance directive, such as a power of attorney for health
22 care. The uniform form may, but need not, be in the form
23 adopted by the Department of Public Health pursuant to Section
24 2310-600 of the Department of Public Health Powers and Duties
25 Law (20 ILCS 2310/2310-600). Except as otherwise provided by
26 law, emergency medical service personnel, a health care

1 provider, or a health care facility shall comply with a
2 Department of Public Health Uniform POLST form, National POLST
3 form, another state's POLST Paradigm portable medical orders
4 form, or an out-of-hospital Do Not Resuscitate (DNR) order
5 sanctioned by a State in the United States that: (i) has been
6 executed by an adult; and (ii) is apparent and immediately
7 available.

8 (d) A health care professional or health care provider may
9 presume, in the absence of knowledge to the contrary, that a
10 completed Department of Public Health Uniform POLST form,
11 National POLST form, another state's POLST Paradigm portable
12 medical orders form, or an out-of-hospital Do Not Resuscitate
13 (DNR) order sanctioned by a State in the United States
14 executed by an adult, or a copy of that form or a previous
15 version of the uniform form, is valid. A health care
16 professional or health care provider, or an employee of a
17 health care professional or health care provider, who in good
18 faith complies with a cardiopulmonary resuscitation (CPR) or
19 life-sustaining treatment order, Department of Public Health
20 Uniform POLST form, or a previous version of the uniform form
21 made in accordance with this Act is not, as a result of that
22 compliance, subject to any criminal or civil liability, except
23 for willful and wanton misconduct, and may not be found to have
24 committed an act of unprofessional conduct.

25 (d-5) Before voiding or revoking a Department of Public
26 Health Uniform POLST form, National POLST form, or another

1 state's POLST Paradigm portable medical orders form consented
2 to by the individual, that individual's legally authorized
3 surrogate decision maker shall first: (1) engage in
4 consultation with the attending health care practitioner; (2)
5 consult the patient's advance directive, if available; and (3)
6 make a good faith effort to act consistently, at all times,
7 with the patient's known wishes, using substituted judgment as
8 the standard. If the patient's wishes are unknown and remain
9 unknown after reasonable efforts to discern them, the decision
10 shall be made on the basis of the patient's best interests as
11 determined by the surrogate decision maker. The attending
12 health care practitioner shall document the reasons for this
13 action in the patient's medical record.

14 (e) Nothing in this Section or this amendatory Act of the
15 94th General Assembly or this amendatory Act of the 98th
16 General Assembly shall be construed to affect the ability of a
17 physician or other practitioner to make a do-not-resuscitate
18 order.

19 (Source: P.A. 99-319, eff. 1-1-16; 100-513, eff. 1-1-18.)